



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 21, 2004

Mr. Richard C. Terrell
Attorney at Law
608 East Second
Alice, Texas 78332

OR2004-0460

Dear Mr. Terrell:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 194794.

The City of Alice (the "city"), which you represent, received a request for the employment application of a named individual. You claim that portions of the submitted information are excepted from disclosure under sections 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

The requested document contains information that may be excepted from disclosure under section 552.117(a)(2) of the Government Code.¹ Section 552.117(a)(2) makes confidential all information that relates to the home address, home telephone number, social security number and family information of a "peace officer."² Whether a particular item of information is protected under this section must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Section 552.117(a)(2) applies to "peace officers" as defined by article 2.12 of the Code of Criminal Procedure. If the peace officers named in the requested document were employed by the city at the time of the request, or if the officers were no longer employed by the city at the time of the request and are still licensed peace officers,

¹In Senate Bill 1388, which became effective on June 20, 2003, the Seventy-eighth Legislature amended section 552.117 of the Government Code by adding "(a)" to the relevant language of this provision. *See* Act of May 30, 2003, 78th Leg., R.S., ch. 947, 2003 Tex. Sess. Law Serv. 2822 (Vernon) (to be codified as an amendment to Gov't Code sec. 552.117).

²Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); *see also* Open Records Decision No. 506 (1988).

their information must be withheld pursuant to section 552.117(a)(2). If the officers were no longer employed by the city at the time of the request and were no longer licensed peace officers, and the former officers made an election to keep their information confidential in accordance with section 552.024 prior to the city's receipt of the current records request, the information must be withheld under section 552.117(a)(1). *See* Gov't Code § 552.117(a)(1). If the officers have never been employed by the city but have elected under section 552.1175(b) to restrict access to their information in city records, then the city must withhold the information under section 552.1175. If none of these scenarios applies, then the home addresses and family member information we have marked are not excepted from disclosure under section 552.117. The social security number may, however, be otherwise excepted from disclosure under section 552.101.

A social security number or "related record" may be excepted from disclosure under section 552.101³ of the Government Code in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the file is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution the city, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by the city pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you claim that section 552.130 applies to a portion of the requested document. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Thus, you must withhold the Texas driver's license number we have marked under section 552.130.

³Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision."

In summary, we have marked information that may be excepted from disclosure under section 552.117 or section 552.1175. The social security number may also be excepted from disclosure under section 552.101 in conjunction with federal law. The marked driver's license number must be withheld under section 552.130. The remaining information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Melissa Vela-Martinez". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Melissa Vela-Martinez
Assistant Attorney General
Open Records Division

MVM/sdk

Ref: ID# 194794

Enc. Submitted documents

c: Dr. Ray Magouirk, D.M.P.
54 Ballerina Circle
Grove, Oklahoma 74344-4800
(w/o enclosures)